



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable C. Simmons
County Auditor
Henderson County
Athens, Texas

Dear Sir:

Opinion No. O-7411

Re: Authority of the Commissioners Court to allow the increase in salary for various county officials as authorized by S. B. 123, Acts 49th Legislature, when such expenditure would be in excess of the budget.

Your letter of recent date requesting an opinion from this department on the above subject matter is as follows:

"S. B. No. 123 Chapter 179 of the 49th Legislature has the following language: 'That the Commissioners Court is authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed 25% per cent of the sum allowed under the law for the fiscal year 1944, provided the total compensation authorized under the law for 1944 did not exceed the sum of \$3,600.00' And carried the same authorization for deputies, assistants and clerks.

"On August 5th the Commissioners Court of the county entered an order increasing the compensation of all elected officers in the amount of 25% per cent and increasing the compensation of deputies and clerks 10% per cent. On the date this order was passed the Officers Salary Fund was overdrawn approximately \$1,200.00 and the General Fund was overdrawn approximately \$4,000.00.

"The officers of this county have been on annual salary of \$3,500 for past several years.

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"With this increase in effect the Officers Salary would by the end of 1947 be overdrawn approximately \$9,000.00 and no funds available in the General Fund to supplement the Salary Fund.

"Could this be a legal expenditure, or should the Court be required to keep the expenditures within the estimated receipts?"

In answer to our letter requesting additional information, you sent us a copy of the following order:

"The State of Texas,
County of Henderson:

"On this the 5th day of August A.D. 1946 the Commissioners Court met in regular session and also resumed their duties as a Board of Equalization.

"Among other things the following proceedings were had to wit: On motion made by Commissioner Boatright and seconded by Commissioner R. E. Warren, that salaries of County Officials be increased 25% of their present salaries and their deputies and employees salaries be increased 10% of their present salaries, a vote was taken and same was passed unanimously by the court to become effective on September 1, 1946. The Auditor was instructed to amend the budget to that effect. The Court moved to adjourn as an Equalization Board until Monday, August 12, 1946."

"Again on August 26, 1946, order again passed to 'amend budget raising salaries as per order of Court passed Aug. 5, 1946.'"

The Commissioners' Court must find that the financial condition of the county is such as will permit the proposed increase in salary, and must also find that the needs of such officers justify the increase before the proposed increase mentioned in your inquiry can be made. This department has repeatedly held that any increase in the salary of a county official authorized by S. B. 123, Acts of the 49th Legislature, Reg. Ses., 1945, would be subject to the budget law (Art. 689a-9 -- 689a-11, V.A.C.S.) and that in order to provide for such increase, the county budget would have to be amended in accordance with said budget law. In connection with the foregoing, we call your attention to the following. In the case of Dancy v. Davidson, 183, S.W. 2d 195, (writ refused) the Court stated the following:

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"The order of the Commissioners' Court referred to in the stipulation is that set forth (insofar as material parts are concerned) in the forepart of this opinion. Briefly stated, the order declares that (1) there exists a necessity for Cameron County to acquire a building in San Benito, (2) that the building owned by Mrs. Jennie B. Bell is suitable for the County's needs, (3) that the price asked therefor is reasonable and fair, (4) that the County has current funds not otherwise appropriated, sufficient to purchase the property, (5) that Mrs. Bell be paid \$37,500.00 by warrant of the County Treasurer, upon approval of title and delivery of deed, and that (6) 'the 1944 budget be amended to include collected though unanticipated revenues, and to include this expenditure.'

* * * *

"It can hardly be contended that the order of April 29, 1944, in itself effected an amendment of the 1944 budget. In fact, the order does not contain findings that the emergency conditions set forth in the statute as authorizing an amendment of the budget do in fact exist. It may have been contemplated by the Commissioners' Court that some further order with reference to the county's budget would be entered. This is suggested in appellants' brief. However that may be, the order of April 29, 1944, is insufficient in itself (and there is no further order in the record) to authorize the delivery of a county warrant for the sum of \$37,500 to Mrs. Bell. It follows that the injunction issued restraining the payment of the county's funds to her under and by virtue of the Commissioners' Court order of April 29, 1944, was properly issued." (Emphasis ours)

We held in our Opinion No. O-5053-A:

"This department has repeatedly held that the question of 'grave public necessity' is a fact question to be determined primarily by the commissioners' court. It is apparent from your letter that your position is that no 'grave public necessity' existed at the time the county budget was amended to take care of increase in salaries for certain county officials and therefore the commissioners' court was unauthorized to make such amendment. However,

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on the other hand it is apparent that the commissioners' court did decide that they were legally authorized to amend the county budget and in fact did amend said budget.

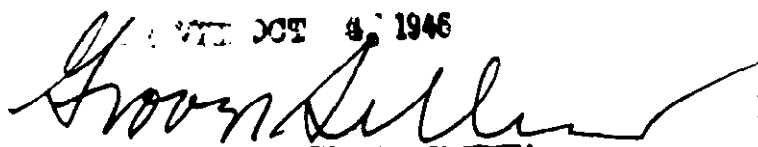
"This department has held (Opinion No. 0-2315) that the discretion of the commissioners' court is not absolute authority to expend county funds in the case of an emergency, and is final, only where the question is debatable or where the existence of an emergency is unquestionable. However, said court has no authority to determine and declare that an emergency exists, and expend county funds therefor, where the facts clearly show the contrary. Such court has no legal authority to declare an emergency and evade the law, where in fact, no emergency exists."

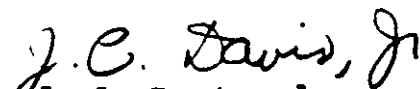
In view of the foregoing, it is the opinion of this department that the Commissioners' Court is unauthorized to make the expenditures mentioned by you unless it finds, in their judgment, the financial condition of the county and the needs of the officers justify the increase in compensation. The Commissioners' Court must make such expenditures "in strict compliance with the budget law except emergency expenditures in the case of grave public necessity to meet unusual and unforeseen conditions which could not by reasonable, diligent thought and attention have been included in the original budget".

On the basis of the language contained in Dancy v. Davidson, it is our further opinion that the order of the Commissioners' Court which you have sent us does not authorize the proposed increase in the salaries of the various county officials since said order does not contain findings that the emergency conditions set forth in the budget law authorizing an amendment to the budget do in fact exist.

Yours very truly

ATTORNEY GENERAL OF TEXAS

RECEIVED OCT 4, 1946

 ATTORNEY GENERAL OF TEXAS

By 
 J. C. Davis, Jr.
 Assistant

By 
 John Reeves

JR:djm

